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In this chapter . . .

This chapter discusses who may formally place a child for adoption as well as the procedures and documentation necessary to complete the placement. Section 6.3 provides an overview of what should be happening between the time the child is placed for adoption and the time the adoption is granted or denied.

The options available to the court when considering a petition for adoption are discussed in Sections 6.3 and 6.4, including the options to extend or eliminate the period of supervision between placement and adoption.

If the court chooses to grant the adoption, the court must prepare a report for the state registrar in order to change the adoptee's name and obtain a new birth certificate. Discussion of these procedures can be found in Section 6.5. After a final order of adoption has been entered, the adoptive parents and the adoptee have new legal rights and obligations. The new legal rights and obligations of the parties are covered in Section 6.6.

6.1 Formal Placement of the Child

The Adoption Code defines “placement” as the “selection of an adoptive parent for a child and transfer of physical custody of the child to a prospective adoptive parent pursuant to this chapter.” MCL 710.22(r).

A “formal placement” is a placement that is approved by the court pursuant to MCL 710.51. Formal placements occasionally follow temporary placements.* However, it is important to note that formal placements may be made, and usually are made, without a temporary placement. MCL 710.51.

A. Who May Make a Formal Placement

MCL 710.55(1) provides that only a person specified in MCL 710.23a(1), MCL 710.23b(1), and MCL 710.23c may place a child for adoption.

The following people or agencies may place a child for adoption:

- ♦ A parent or guardian having legal and physical custody of a child may make a direct placement* by making a temporary placement, which when approved by the court becomes a formal placement. MCL 710.23a(1).
- ♦ A court that has obtained legal and physical custody of a child pursuant to the Juvenile Code. MCL 710.23c.
- ♦ A child placing agency that has obtained legal and physical custody of a child pursuant to MCL 710.29* or the Juvenile Code. MCL 710.23b(1).
- ♦ The FIA if it has obtained legal and physical custody of a child pursuant to MCL 710.29 or the Juvenile Code. MCL 710.23b(1).

Once the placement is approved by the court, it becomes a formal placement.

A person who places a child for adoption in violation of MCL 710.55(1) is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than \$100.00 or both, for the first violation. Second or subsequent violations are felonies punishable by imprisonment for not more than 4 years or a fine of not more than \$2,000.00 or both. MCL 710.55(1). The court may enjoin any person who violates MCL 710.55 from further violations. MCL 710.55(1).

B. Procedural and Documentary Requirements

Prior to placing a child for adoption several procedural and documentary requirements must be met. They include the following:

- ♦ Compilation and distribution of nonidentifying information.

*See Section 5.1 for information on temporary placements.

*See Section 8.1 for information on direct placements.

*MCL 710.29 governs the procedures for release of parental rights. See Section 2.1 for more information.

- ♦ Compilation of identifying information.
- ♦ Verified statements:
 - verified accounting signed by the petitioner;
 - verified statement of attorney for each petitioner;
 - verified statement of attorney for each parent; and
 - verified statement of the child placing agency or the FIA.
- ♦ Consent by the adoptee, if the adoptee is 14 years of age or older.
- ♦ Investigation report.
- ♦ Order terminating parental rights.

See Appendix B for the SCAO forms “Petitioner’s Verified Accounting,” “Statement of Services Performed by Attorney,” and “Statement of Services Performed by Agency/Family Independence Agency”

1. Nonidentifying Information Provided to the Prospective Adoptive Parent

Except in the case of a step-parent or relative adoption,* prior to placing a child for adoption, the prospective parent must be provided with nonidentifying information.

MCL 710.27(1) provides:

“Before placement of a child for adoption, a parent or guardian, a child placing agency, the [FIA], or the court that places the child shall compile and provide to the prospective adoptive parent a written document containing all of the following nonidentifying information that is not made confidential by state or federal law and that is reasonably obtainable from the parents, relatives, or guardian of the child; from any person who has had physical custody of the child for 30 days or more; or from any person who has provided health, psychological, educational, or other services to the child:

“(a) Date, time, and place of birth of the child including the hospital, city, county, and state.

“(b) An account of the health and genetic history of the child, including an account of the child’s prenatal care; medical condition at birth; any drug or medication taken by the child’s mother during pregnancy; any subsequent medical, psychological, psychiatric, or dental examination and diagnosis; any psychological evaluation done when the child was under the jurisdiction of the court; any

*MCL 710.27 does not apply to step-parent or relative adoptions.

neglect or physical, sexual, or emotional abuse suffered by the child; and a record of any immunizations and health care the child received while in foster or other care.

“(c) An account of the health and genetic history of the child’s biological parents and other members of the child’s family, including any known hereditary condition or disease; the health of each parent at the child’s birth; a summary of the findings of any medical, psychological, or psychiatric evaluation of each parent at the time of placement; and, if a parent is deceased, the cause of and the age at death.

“(d) A description of the child and the child’s family of origin, including all of the following:

- (i) Given first name of the child at birth.
- (ii) The age and sex of siblings of the child.
- (iii) The child’s enrollment and performance in school, results of educational testing, and any special educational needs.
- (iv) The child’s racial, ethnic, and religious background, and a general description of the child’s parents, including the age of the child’s parents at the time of termination of parental rights, and the length of time the parents had been married at the time of placement.
- (v) An account of the child’s past and existing relationship with any relative, foster parent, or other individual or facility with whom the child has lived or visited on a regular basis. The account shall not include names and addresses of individuals.
- (vi) The levels of educational, occupational, professional, athletic, or artistic achievement of the child’s family.
- (vii) Hobbies, special interests, and school activities of the child’s family.
- (viii) The circumstances of any judicial order terminating the parental rights of a parent for abuse, neglect, abandonment, or other mistreatment of the child.
- (ix) Length of time between the termination of parental rights and adoptive placement and

whether the termination was voluntary or court-ordered.

(x) Any information necessary to determine the child's eligibility for state or federal benefits, including financial, medical, or other assistance."

The foregoing information must also be supplemented by other nonidentifying background information that a parent, guardian, child placing agency, the FIA, or court considers appropriate. MCL 710.27(2).

2. Compilation of Identifying Information

Identifying information must also be compiled by the parent, the guardian, the child placing agency, or the court that places a child for adoption.* However, this information is *not* provided to the prospective adoptive parent.

MCL 710.27(3) provides:

"A parent or guardian, the [FIA], a child placing agency, or a court that places an adoptee under this chapter shall compile all of the following identifying information if reasonably obtainable:

"(a) Name of the child before placement in adoption.

"(b) Name of each biological parent at the time of termination of parental rights.

"(c) The most recent name and address of each biological parent.

"(d) Names of the biological siblings at the time of termination."

Note: MCL 710.27(7) provides that a parent or guardian and prospective adoptive parent are not prohibited from exchanging identifying information or meeting if a direct placement adoption is made pursuant to MCL 710.23a or a temporary placement is made pursuant to MCL 710.23b. See Section 8.1 for information on direct placement adoptions and Section 5.1 for information on temporary placements.

Identifying and Nonidentifying Information. Both the nonidentifying and identifying information required in the foregoing paragraphs must be maintained by the child placing agency, the FIA, or the court that places the child. MCL 710.27(4). An employee or agent of a child placing agency, the FIA or the court who intentionally destroys this information is guilty of a misdemeanor. MCL 710.27(4). The release of identifying and nonidentifying

*Except in cases of step-parent or relative adoption. MCL 710.27(6).

information is controlled by the central adoption registry. See Section 9.4 for information on the central adoption registry.

3. Verified Statements

Except for charges and fees approved by the court, MCL 710.54 prohibits a person from paying, giving, offering to pay or give, requesting, receiving, or accepting any money or other consideration or thing of value in connection with any of the following:

- ♦ The placing of a child for adoption.
- ♦ The registration, recording, or communication of the existence of a child available for adoption.
- ♦ A release of parental rights.
- ♦ A consent to adoption.
- ♦ An adoption petition.

A detailed discussion of MCL 710.54 can be found in Chapter 10. In order for the court to ensure that the persons and agencies involved in an adoption have complied with MCL 710.54, the parties are required to file verified accounting statements with the court.

MCL 710.54(7) requires all of the following documents to be filed with the court at least seven days prior to a formal placement:

“(a) A **verified accounting signed by the petitioner** itemizing all payments or disbursements of money or anything of value made or agreed to be made by or on behalf of the petitioner in connection with the adoption. The accounting shall include the date and amount of each payment or disbursement made, the name and address of each recipient, and the purpose of each payment or disbursement. Receipts shall be attached to the accounting.

“(b) A **verified statement of the attorney for each petitioner** itemizing the services performed and any fee, compensation, or other thing of value received by, or agreed to be paid to, the attorney for, or incidental to, the adoption of the child. If the attorney is an adoption attorney representing a party in a direct placement adoption,* the verified statement shall contain the following statements:

- (i) The attorney meets the requirements for an adoption attorney under [MCL 710.22]. [In OAG, 1995, No 6844 (April 6, 1995), the attorney general found these requirements for adoption attorneys unconstitutional.*]

*See Section 8.1 for information on direct placement adoptions.

*See Section 8.2(A) for more information.

- (ii) The attorney did not request or receive any compensation for services described in [MCL 710.54(2)].*

*See Section 10.2 for more information on MCL 710.54.

“(c) A **verified statement of the attorney for each parent** of the adoptee itemizing the services performed and any fee, compensation, or other thing of value received by, or agreed to be paid to, the attorney for, or incidental to, the adoption of the child. If the attorney is an adoption attorney representing a party in a direct placement adoption, the verified statement shall contain the following statements:

- (i) The attorney meets the requirements for an adoption attorney under [MCL 710.22].

- (ii) The attorney did not request or receive any compensation for services described in [MCL 710.54(2)].

“(d) A **verified statement of the child placing agency or the [FIA]** itemizing the services performed and any fee, compensation, or other thing of value received by, or agreed to be paid to, the child placing agency or the [FIA] for, or incidental to, the adoption of the child, and containing a statement that the child placing agency or the [FIA] did not request or receive any compensation for services described in [MCL 710.54(2)].” (Emphasis added.)

In addition to filing the foregoing documents at least seven days prior to formal placement, all of the foregoing documents must be updated and filed with the court at least 21 days before the entry of a final order of adoption. MCL 710.54(8). MCL 710.54(7) requires the foregoing documentation “[a]t least 7 days before formal placement;” however, the court may enter an order of placement before the lapse of the seven-day period. MCR 3.803(B)(2). MCL 710.54(8) also indicates that the documentation must be filed at “least 21 days before the entry of the final order of adoption.” However, MCR 3.803(B)(3) provides that the court may enter a final order of adoption before the lapse of the 21-day period.

4. Execution of Consent by Adoptee

“If the child to be adopted is over 14 years of age, that child’s consent is necessary before the court may enter an order of adoption.” MCL 710.43(2).

Attached in Appendix B is the SCAO form “Consent to Adoption by Adoptee.”

5. Investigation Report and Order Terminating Parental Rights

*See Section 5.1 for information on temporary placements.

Except for a temporary placement pursuant to MCL 710.23d,* a child may not be placed in a home for the purpose of adoption until an order terminating parental rights has been entered under the Adoption Code or the Juvenile Code and the court has formally approved placement under MCL 710.51. MCL 710.41(1).

MCL 710.51 provides, in relevant part:

*See Section 5.5 for information on the investigation report.

“(1) Not later than 14 days after receipt of the report of investigation,* except as provided in subsections (2) and (5), the judge shall examine the report and shall enter an order terminating the rights of the child’s parent or parents, if there was a parental consent, or the rights of any person in loco parentis, if there was a consent by other than parents, and approve placement of the child with the petitioner if the judge is satisfied as to both of the following:

*See Sections 2.6–2.10 for information on consents.

(a) The genuineness of consent* to the adoption and the legal authority of the person or persons signing the consent.

(b) The best interests of the adoptee will be served by the adoption.”

“(2) If it is necessary to hold a hearing before entering an order terminating the rights of a parent, parents, or a person in loco parentis, or if other good cause is shown, the time specified in subsection (1) shall be extended for an additional 14-day period.”

* * *

*See Section 4.4 for information on the Interstate Compact on the Placement of Children. See Section 4.5 for information on international adoptions.

“(4) Without making the child a ward of the court, the court may approve placement of a child if the child is placed for adoption in this state by a public or licensed private agency of another state or country* and if the law of the sending state or country prohibits the giving of consent to adoption at the time of placement. Before placement of the child in that instance, the sending agency shall tender evidence as the court requires to demonstrate that the agency possesses the necessary authority to consent to the adoption at the time of entry of the final order of adoption. After the sending agency has given evidence of its ability to consent, the agency shall not do anything to jeopardize its ability to grant the required consent before entry of the final order of adoption. After the sending agency gives its consent for the adoption, that consent shall not be withdrawn.”

MCL 710.31(1) provides:

“Except as provided in [MCL 710.23d], if a child is born out of wedlock and the release or consent of the biological father cannot be obtained, the child shall not be placed for adoption until the parental rights of the father are terminated by the court as provided in [MCL 710.37 or MCL 710.39], by the court pursuant to [MCL 712A.19b], or by a court of competent jurisdiction in another state or country.”

6. “Legal Risk Placement”

Once an order of termination has been entered by the court, a child may be placed for adoption even though the time for a rehearing or appeal* of the termination order has not expired. The placement is a “legal risk” placement, more commonly referred to as a “legal risk adoption.” MCL 710.41(2) provides:

“If an order terminating parental rights is entered pursuant to [the Adoption Code] or [the Juvenile Code], the child may be placed in a home for the purpose of adoption during the period specified for a rehearing or an appeal as of right and the period during which a rehearing or appeal as of right is pending. When a child placing agency, the court, or [the FIA] formally places a child or the court approves placement of a child pursuant to this subsection, the child placing agency, court, or the [FIA] shall inform the person or persons in whose home the child is placed that an adoption will not be ordered until 1 of the following occurs:

“(a) The petition for rehearing is granted, at the rehearing the order terminating parental rights is not modified or set aside, and subsequently the period for appeal as of right to the court of appeals has expired without an appeal being filed.

“(b) The petition for rehearing is denied and the period for appeal as of right to the court of appeals has expired without an appeal being filed.

“(c) There is a decision of the court of appeals affirming the order terminating parental rights.”

MCL 710.41 does not apply to step-parent adoptions.* MCL 710.41(4).

A “legal risk placement” or a “legal risk adoption” as referred to in this section, does *not* refer to an “at risk” adoption. In *In re JK*, 468 Mich 202, 209 (2003), the trial court granted an adoption while a timely application for leave to appeal was filed in the Supreme Court. The Supreme Court noted that the county designated the adoption, which occurred prior to the expiration of the appeals, as an “at risk” adoption. 468 Mich at 217, n25. The term “at risk”

*See Section 7.2 for information on rehearings. See Sections 7.3–7.5 for information on appeals.

*See Section 8.3 for more information on step-parent adoptions.

denoted the risk that the Supreme Court might vacate the order terminating parental rights. The Supreme Court reversed the order terminating parental rights and determined that the adoption was therefore invalid. 468 Mich at 219. The Supreme Court explicitly disapproved of “at risk” adoptions. 468 Mich at 217, n25.

However, as referred to in this section, a “legal risk placement” or “legal risk adoption” denotes the *placement* of a child prior to the expiration of the appeals period; *no* adoption order is entered prior to the expiration of the appeals period.

MCL 710.41 does not prevent a child residing in a licensed foster home from being adopted by the foster parent or parents. MCL 710.41(3).

Note: MCL 710.41 only applies to formal placements. Temporary placements made pursuant to MCL 710.23d may be made prior to the termination of parental rights. See Section 5.1 for information on temporary placements.

7. Violations of MCL 710.41

MCL 710.69 provides that a person who violates MCL 710.41, upon first conviction is guilty of a misdemeanor and upon second conviction is guilty of a felony.

6.2 Prohibited Placements

Both state and federal laws prohibit certain placements and the consideration of certain factors in the placement of a child for adoption.

A. Conviction of Child Abuse or Criminal Sexual Conduct

A child may not be placed* with a prospective adoptive parent if the person or court who is authorized to place the child has reliable information that the prospective adoptive parent has been convicted of any of the following:

- ♦ MCL 750.145a — Accosting, enticing or soliciting a child for immoral purposes. MCL 710.22a(a).
- ♦ MCL 750.145c(2) — Creating child sexually abusive material through knowingly persuading, inducing, enticing, coercing, causing, or allowing a child to engage in child sexually abusive activity, or the producing, making or financing of any child sexually abusive activity or material. MCL 710.22a(a).

*Adoption is also prohibited if the prospective adoptive parent has been convicted of any of the enumerated crimes. See Section 4.6(B).

- ♦ MCL 750.145c(3) — Distributing, promoting, or financing the distribution or promotion of any child sexually abusive material. MCL 710.22a(a).
- ♦ MCL 750.145c(4) — Possession of child sexually abusive material. MCL 710.22a(a).
- ♦ MCL 750.520b — First-degree criminal sexual conduct, if the victim was under the age of 18 at the time the crime was committed. MCL 710.22a(b).
- ♦ MCL 750.520c — Second-degree criminal sexual conduct, if the victim was under the age of 18 at the time the crime was committed. MCL 710.22a(b).
- ♦ MCL 750.520d — Third-degree criminal sexual conduct, if the victim was under the age of 18 at the time the crime was committed. MCL 710.22a(b).
- ♦ MCL 750.520e — Fourth-degree criminal sexual conduct, if the victim was under the age of 18 at the time the crime was committed. MCL 710.22a(b).
- ♦ MCL 750.520f — A second or subsequent criminal sexual conduct offense or any similar statute of the United States or other states including rape, carnal knowledge, indecent liberties, gross indecency, or an attempt to commit such an offense, if the victim was under the age of 18 at the time the crime was committed. MCL 710.22a(b).
- ♦ MCL 750.520g — Assault with intent to commit conduct involving penetration, if the victim was under the age of 18 at the time the crime was committed. MCL 710.22a(b).
- ♦ The law of another state substantially similar to one of the above enumerated crimes. MCL 710.22a(c).

42 USC 671(a)(20)(A) requires a state to provide procedures for criminal record checks for any prospective adoptive parent before the adoptive parent may be approved for placement of a child. In addition, the Social Security Act, as amended by the Adoption and Safe Families Act (ASFA) provides:

“(i) in any case in which a record check reveals a felony conviction for child abuse or neglect, for spousal abuse, for a crime against children (including child pornography), or for a crime involving violence, including rape, sexual assault, or homicide, but not including other physical assault or battery, if a State finds that a court of competent jurisdiction has determined that the felony was committed at any time, such final approval shall not be granted; and

“(ii) in any case in which a record check reveals a felony conviction for physical assault, battery, or a drug-related offense,

if a State finds that a court of competent jurisdiction has determined that the felony was committed within the past 5 years, such final approval shall not be granted. . . .” 42 USC 671(a)(20)(A)(i)–(ii).

Michigan must comply with the above provisions, as well as other provisions of ASFA, in order to be eligible to receive federal adoption assistance funding. 42 USC 671(a). ASFA provides a provision to opt out of the above requirements, 42 USC 671(a)(20). However, Michigan has not opted out.

Currently, Michigan law does not comply with all of the provisions of 42 USC 671. Michigan law does not prohibit adoption when an adoptive parent has a conviction for physical assault, battery, or a drug-related offense within the past five years, or when a parent is convicted of spousal abuse, child abuse or neglect, or for “a crime involving violence including . . . homicide.” Michigan law prohibits placements or adoption when the prospective adoptive parent is convicted of any of the above enumerated crimes, when the victim of the crime was under the age of eighteen. However, 42 USC 671, requires that the adoptive parent not be convicted of a “crime involving violence, including rape[and] sexual assault.” No limitation on the age of the victim of the criminal sexual conduct is provided in the federal law.

Currently Senate Bill 516 (2003), which has been passed by the Michigan Senate, seeks to change the Michigan law to prohibit placement or adoption by a prospective adoptive parent who has been convicted of one of the above enumerated criminal sexual conduct crimes, regardless of the age of the victim.

B. Considerations of Age, Race, National Origin, Religious Affiliation, Disability, or Income

MCL 722.957(1) provides in part:

“ . . . A child placing agency shall not make placement decisions based solely on age, race, religious affiliation, disability, or income level.”

Private child placing agencies may consider religious affiliation in certain situations. MCL 722.957(2) provides:

“Subsection (1), as related to religious affiliation, does not apply to a private child placing agency operated, supervised, or controlled by a religious institution or organization that limits services or gives preference to an applicant of the same religion.”

Federal Adoption Rights

42 USC 1996b(1) prohibits a person or government that is involved in adoption placements from doing any of the following:

“(A) deny[ing] to any individual the opportunity to become an adoptive or a foster parent, on the basis of the race, color, or national origin of the individual, or of the child, involved; or

“(B) delay[ing] or deny[ing] the placement of a child for adoption or into foster care, on the basis of the race, color, or national origin of the adoptive or foster parent, or the child, involved.”

Noncompliance with 42 USC 1996b(1) is a violation of title VI of the Civil Rights Act of 1964.*

*See 42 USC 2000d et. seq.

42 USC 1996b does not affect the application of the Indian Child Welfare Act of 1978.* The designation of a child as an “Indian child” under the ICWA is not a racial classification; it is a political designation.

*See Chapter 11 for information on the Indian Child Welfare Act.

42 USC 671(a)(18) provides that states are not eligible for adoption assistance payments pursuant to 42 USC 670 if they have not developed a state plan, which is approved by the Secretary, which provides the following:

“... neither the State nor any other entity in the State that receives funds from the Federal Government and is involved in adoption or foster care placements may--

“(A) deny to any person the opportunity to become an adoptive or a foster parent on the basis of the race, color, or national origin of the person, or of the child, involved; or

“(B) delay or deny the placement of a child for adoption or into foster care, on the basis of the race, color, or national origin of the adoptive or foster parent, or the child, involved[.]”

6.3 Post-Placement Proceedings

A. Supervision Period

Generally, after the placement of a child for adoption, a supervision period of six months occurs. MCL 710.56(1) provides that six months after formal placement pursuant to MCL 710.51, unless the court determines that circumstances have arisen that make adoption undesirable, the court may enter an order of adoption.

The court may waive the six-month supervision period, or any part of the six-month supervision period, on a motion of the petitioner if the waiver would serve the best interests of the adoptee. MCL 710.56(1).

The Adoption Code defines “best interests” as follows:

“‘Best interests of the adoptee’ or ‘best interests of the child’ means the sum total of the following factors to be considered, evaluated, and determined by the court to be applied to give the adoptee permanence at the earliest possible date:

*See Section 2.12(C)–(F) for more information on MCL 710.39.

“(i) The love, affection, and other emotional ties existing between the adopting individual or individuals and the adoptee or, in the case of a hearing under [MCL 710.39],* the putative father and the adoptee.

“(ii) The capacity and disposition of the adopting individual or individuals or, in the case of a hearing under [MCL 710.39], the putative father to give the adoptee love, affection, and guidance, and to educate and create a milieu that fosters the religion, racial identity, and culture of the adoptee.

“(iii) The capacity and disposition of the adopting individual or individuals or, in the case of a hearing under [MCL 710.39], the putative father, to provide the adoptee with food, clothing, education, permanence, medical care or other remedial care recognized and permitted under the laws of this state in place of medical care, and other material needs.

“(iv) The length of time the adoptee has lived in a stable, satisfactory environment, and the desirability of maintaining continuity.

“(v) The permanence as a family unit of the proposed adoptive home, or, in the case of a hearing under [MCL 710.39], the home of the putative father.

“(vi) The moral fitness of the adopting individual or individuals or, in the case of a hearing under [MCL 710.39], of the putative father.

“(vii) The mental and physical health of the adopting individual or individuals or, in the case of a hearing under [MCL 710.39], of the putative father, and of the adoptee.

“(viii) The home, school, and community record of the adoptee.

“(ix) The reasonable preference of the adoptee, if the adoptee is 14 years of age or less and if the court considers the adoptee to be of sufficient age to express a preference.*

“(x) The ability and willingness of the adopting individual or individuals to adopt the adoptee’s siblings.

“(xi) Any other factor considered by the court to be relevant to a particular adoption proceeding, or to a putative father’s request for child custody.” MCL 710.22(f).

*If the adoptee is over the age of 14, the adoptee must consent to the adoption. MCL 710.43(2). See Section 2.6(A).

The court may also conduct a hearing and determine that the best interests of the adoptee would be served by extending the six-month supervision period for a time not exceeding 18 months from the time of formal placement to adoption. MCL 710.56(1).

If an adoption is not ordered within 18 months after formal placement, the court must hold a hearing and determine whether an order of adoption shall be entered or the petition for adoption denied.* MCL 710.56(1).

*See Section 6.4(B) for information on denial of an adoption petition.

If a child is formally placed pursuant to MCL 710.41(2), the court may extend the six-month supervision period for an additional period that may exceed 18 months from the time of formal placement until an order of adoption may be entered. MCL 710.56(1). MCL 710.41(2) provides for placement of a child when parental rights have been terminated pursuant to the Adoption Code or the Juvenile Code but the time for filing a motion for a rehearing or an appeal has not expired. This is a “legal risk” placement, more commonly referred to as a “legal risk adoption.”

B. Supervision Report

MCL 710.52 provides:

“(1) Subject to subsection (2), during the period before entry of the order of adoption, the child shall be supervised at the direction of the court by an employee or agency of the court, a child placing agency, or the [FIA], who shall make reports regarding the adjustment of the child in the home as the court orders. The investigations shall be made under reasonable circumstances and at reasonable intervals.

“(2) In a direct placement,* the child shall be supervised during the period before entry of the order of adoption by the child placing agency that investigated the placement under [MCL 710.46] or, in the court’s discretion, by another child placing agency.”

*See Section 8.1 for more information on direct placements.

C. Medical Treatment

When a child is formally placed for adoption, unless otherwise ordered by the court, the prospective adoptive parents may consent to all medical, surgical, psychological, educational, and related services for the child. MCL 710.51(7).

6.4 Granting or Denying the Adoption Petition

Once all of the procedural and time requirements, as set forth in Chapters 2—6, have been met, the court must determine whether or not to grant the adoption. The decision to grant or deny a petition for adoption is within the discretion of the trial court. *In re Kyung Won Kim*, 72 Mich App 85, 88 (1976).

A. Granting the Adoption Petition*

No formal hearing is required prior to the court granting the adoption.

MCL 710.56(2) provides:

“If a petition for rehearing or an appeal as of right* from an order terminating parental rights has been filed, the court shall not order an adoption until 1 of the following occurs:

“(a) The petition for rehearing is granted, and at the rehearing the order terminating parental rights is not modified or set aside, and subsequently the period for appeal as of right to the court of appeals has expired without an appeal being filed.

“(b) The petition for rehearing is denied and the period for appeal as of right to the court of appeals has expired without an appeal being filed.

“(c) The court of appeals affirms the order terminating parental rights.”

The requirements of MCL 710.56(2) must be read in conjunction with MCR 7.215(F), which establishes the effective date of a Court of Appeals opinion. *In re JK*, 468 Mich 202, 216 (2003). MCR 7.215(F) provides:

“(1) Routine Issuance. Unless otherwise ordered by the Court of Appeals or the Supreme Court or as otherwise provided by these rules,

*The requirements for granting an adoption petition for an adult adoption can be found in Section 6.8.

*See Chapter 7 for information on rehearings and appeals.

“(a) the Court of Appeals judgment is effective after the expiration of the time for filing a timely* application for leave to appeal to the Supreme Court, or, if such an application is filed, after the disposition of the case by the Supreme Court;

“(b) execution on the Court of Appeals judgment is to be obtained or enforcement proceedings had in the trial court or tribunal after the record has been returned (by the clerk under MCR 7.210[I] or by the Supreme Court clerk under MCR 7.311[B]) with a certified copy of the court’s judgment or, if a record was not transmitted to the Court of Appeals, after the time specified for return of the record had it been transmitted.”

In *In re JK*, 468 Mich 202, 219 (2003), the Michigan Supreme Court held that MCL 710.56(2), read in conjunction with MCR 7.215(F), prohibits trial courts from entering an adoption order while a parent’s appeal of the termination of parental rights is pending in either the Court of Appeals or the Supreme Court.

Certified Copies. When the court enters an order of adoption, certified copies must be given to the adopting parent or parents. MCL 710.58. MCL 710.58 also provides in part:

“If the consent to the adoption was given by a duly authorized representative of the [FIA], of a child placing agency, or of a public or licensed private agency of another state or country, a certified copy of the order of adoption shall be furnished by the court to the [FIA] or agency.”

Note: If no formal hearing is held, some courts require adoptive parents to come to the court to pick up the certified copies of the adoption order. Before releasing the certified order, the court requires the adoptive parents to sign a form indicating that they waive their right to a formal hearing and that they are still married and no divorce is pending. This practice is not mandated by law, but some courts have instituted this local practice to ensure that the parties are still married.

Public Information Form. Within 15 days of entering a final order of adoption, the court must forward a public information form to the FIA. MCL 710.58a(1). The public information form that the court forwards to the FIA is either filled out and filed with the court by the primary adoption facilitator, or if the primary adoption facilitator has not filed a form, the court must fill out the public information form. MCL 710.58a(1)(b).*

*Effective September 1, 2003, MCR 7.215(F)(1)(a) no longer contains the word “timely.” See Michigan Supreme Court Order, 1996-50; 2000-27 (June 6, 2003).

*See Section 8.2(B)(6) for information on the contents of a public information form, including confidentiality requirements.

B. Denying the Adoption Petition

MCL 710.62 provides:

“If the court denies an order of adoption, the court may return the child to the parents or original custodian and restore their rights, or make a disposition appropriate for the welfare of the ward as is authorized by [MCL 712A.18] by an ex parte order entered in the court.”

A court that denies a petition for adoption or fails to issue an order under the Adoption Code must state the reason for its actions on the record or in writing. MCL 710.63.

6.5 Name Change and New Birth Certificate

A. Changing the Adoptee’s Name

MCL 710.60(1) provides that after the entry of the order of adoption, the adoptee shall, in case of a change of name, be known and called by the new name.

Confidentiality of Natural Parents and Adoptee’s Birth Name. MCL 710.59 provides:

“Where the parents or surviving parent has given consent to an adoption and the petitioner desires to change the name of the adopted child, the order of adoption and exemplification of record shall not contain the name of the child’s natural parents or the name bestowed upon the child before the adoption.”

B. Court’s Responsibilities

For each adoption, the court is responsible for preparing a report of adoption and furnishing the report to the State Registrar’s Office. MCL 333.2829(1) provides:

“For each adoption ordered by the [Family Division of the Circuit Court] in this state, the court shall prepare a report of adoption on a form prescribed and furnished by the state registrar. The report shall:

“(a) Include the facts necessary to locate and identify the certificate of live birth of the individual adopted.

“(b) Provide information necessary to establish a new certificate of live birth of the individual adopted.

“(c) Identify the adoption order.

“(d) Be certified by the probate register or clerk.”

Each month, the probate register or clerk is responsible for forwarding the reports of adoption orders to the appropriate registration authority. MCL 333.2829(3) provides:

“Not later than the tenth day of the calendar month, the [Family Division of the Circuit Court] register or clerk shall forward:

“(a) To the state registrar, reports of adoption orders, and amendments, annulments, and rescissions of the orders, entered during the preceding month for individuals born in this state.

“(b) To the appropriate registration authority in another state, the United States department of state, or the United States immigration and naturalization service, reports of adoption orders, and amendments, annulments, and rescissions of the orders, entered during the preceding month for individuals born outside this state.”

C. New Birth Certificate

MCL 333.2831 requires the state registrar to issue a new certificate of birth for an individual born in this state when the registrar receives the following:

“(a) A report of adoption as provided in [MCL 333.2829], a report of adoption prepared and filed under the laws of another state or foreign country,* or a certified copy of the adoption order, together with the information necessary to identify the original certificate of birth and to establish a new certificate of live birth. However, a new certificate of live birth shall not be established if so requested by the court ordering the adoption; the adopting parent; or the adoptee, if the adoptee is an adult.”

*See Section 4.5 for information on international adoptions.

MCL 333.2829(4) provides that a new birth certificate issued to an adopted individual must conform to the requirements of MCL 710.67 and MCL 710.68.

MCL 710.67(3) provides that the Director of Public Health must furnish to the adoptive parent or parents a certified copy of the new birth certificate that must not disclose the adoption.

The Director of Public Health may also issue a new birth certificate to an adoptee. The new birth certificate must not refer to adoption and must conform as nearly as possible to the appearance of birth certificates in other cases. MCL 710.67(3).

The Department of Public Health must insure that the original birth certificate on file for an adoptee has been sealed and that a new birth certificate has been prepared in conformance with MCL 710.67(3). MCL 710.68(15).

Note: The Department of Public Health requires a fee for a new birth certificate. Local practice determines how the courts handle this fee. Some courts collect the fee and forward the money to the Department of Public Health along with the report of adoption. Some courts do not collect the fee; they instruct the adoptive parents to contact the Department of Public Health directly in order to pay the proper processing fee. Some courts do not discuss the fee with the adoptive parents and the Department of Public Health will contact the parents to discuss payment of the fee.

D. Delayed Registration of Foreign Birth

*See Section 4.5 for information on international adoptions.

If a child is born outside of the United States and then adopted,* the adopting parent may file a motion for delayed registration of a foreign birth. MCL 333.2830 provides:

“(1) If a child whose birth occurred outside the United States, a territory of the United States, or Canada, is adopted by a resident of this state under the laws of this state or under the laws of a foreign country, the probate court, on motion of the adopting parent, may file a delayed registration of birth on a form provided by the department. The delayed registration shall contain the date and place of birth and other facts specified by the department.

“(2) If the date and place of birth cannot be documented from foreign records or a medical assessment of the development of the child indicates that the date of birth as stated in the immigration records is not correct, the court shall determine the facts and establish a date and place of birth and may file a delayed registration of birth as provided in subsection (1).

“(3) Upon the petition of a child adopted in this state whose birth occurred outside the United States, a territory of the United States, or Canada, or a petition of the child’s adoptive parents, the court that issued an order of adoption for that child before the effective date of this section* may issue a delayed registration of birth for the adopted child as provided in subsection (1).”

*MCL 333.2830 became effective on September 30, 1978. 368 PA 1978.

See Appendix A for the checklist for delayed registration of foreign birth certificates used by the Family Division of the Circuit Court in Kalamazoo County. See also Appendix B for the SCAO form “Motion and Order for Delayed Registration of Foreign Birth.”

6.6 Legal Rights and Obligations

MCL 710.60(1) provides that after the entry of the order of adoption, “[t]he person or persons adopting the adoptee then stand in the place of a parent or parents to the adoptee in law in all respects as though the adopted person had been born to the adopting parents and are liable for all the duties and entitled to all the rights of parents.”

MCL 710.60(2) provides:

“After entry of the order of adoption, there is no distinction between the rights and duties of natural progeny and adopted persons, and the adopted person becomes an heir at law of the adopting parent or parents, and an heir at law of the lineal and collateral kindred of the adopting parent or parents. After entry of the order of adoption, an adopted child is no longer an heir at law of a parent whose rights have been terminated under [the Adoption Code] or [the Juvenile Code] or the lineal or collateral kindred of that parent, nor is an adopted adult an heir at law of a person who was his or her parent at the time the order of adoption was entered or the lineal or collateral kindred of that person, except that a right, title, or interest vesting before entry of the final order of adoption is not divested by that order.”

Parental rights to a child include the rights to custody, control, services, earnings and the right to inherit from the minor. MCL 722.2 (Status of Minors and Child Support Act) and 700.2103(b) (Estates and Protected Individuals Code).

An adopted child is the child of his or her adoptive parent or parents. MCL 700.2114(2).

In *Theodore v Packing Materials Inc*, 396 Mich 152, 162-63 (1976), the Michigan Supreme Court held that “[t]he legal relationship between parents and their natural children is effectively terminated when the children are legally adopted by others. All rights and obligations between the child and parents are severed and the adoptive parents become the legal parents in all respects.”

An adoptive parent is the legal parent of a child and is entitled to all rights of a parent, including the right to custody of the child in the absence of a showing that the adoptive parent is not a fit parent. *Liebert v Derse*, 309 Mich 495, 499-500 (1944) and *In re Petition of Shinkonis*, 312 Mich 199, 203-204 (1945).

A step-parent who adopts a child is obligated to care for and support the adoptee. Those obligations continue even after the adoptee’s parents divorce. *Burk v Burk*, 222 Mich 149, 152 (1923).

6.7 Grandparent Visitation

*See Section 6.6 for information on MCL 710.60.

MCL 710.60 provides that an adoptee is no longer an heir at law of his or her former parents.* However, the entry of an order of adoption does not prohibit the entry of an order for grandparenting time pursuant to the Child Custody Act, MCL 722.27b. MCL 710.60(3).

During the pendency of a step-parent adoption proceeding, the parent of a deceased natural parent of the adoptee may seek an order for grandparenting time pursuant to MCL 722.27b (Child Custody Act). MCL 710.60(3).

MCL 722.27b(1) provides:

“Except as provided in this subsection, a grandparent of the child may seek an order for grandparenting time in the manner set forth in this section only if a child custody dispute with respect to that child is pending before the court. If a natural parent of an unmarried child is deceased, a parent of the deceased person may commence an action for grandparenting time. Adoption of the child by a stepparent under chapter X of Act No. 288 of the Public Acts of 1939, being sections 710.21 to 710.70 of the Michigan Compiled Laws, does not terminate the right of a parent of the deceased person to commence an action for grandparenting time.”

A parent of a deceased natural parent may commence an action for grandparent visitation even after the adoption has been ordered. *Jones v Slick*, 242 Mich App 715, 721 (2000).

*See *Wickham v Byrne*, 518 NE 2d 1037 (1988); *Seagrave v Price*, 79 SW 3d 339 (2002); *Blixt v Blixt*, 774 NE 2d 1052 (2002); and *Herbst v Swan*, 102 Cal App 4th 813 (2002).

Note of Caution: Grandparent visitation statutes have been challenged as unconstitutional in several states.* In *Troxel v Granville*, 530 US 57, 64-76 (2000), the United States Supreme Court determined the nonparental visitation statute in Washington state was unconstitutional. The Court found that the Washington statute unconstitutionally infringed upon the fundamental right of parents to make decisions concerning the care, custody, and control of their children. 530 US at 66-67. The Court also provided, “we would be hesitant to hold that specific nonparental visitation statutes violate the Due Process Clause as a *per se* matter.” 530 US at 73-74. The United States Supreme Court left open the possibility that a nonparental visitation statute could be constitutionally framed.

In *DeRose v DeRose*, 249 Mich App 388, 395 (2002), the Michigan Court of Appeals found Michigan’s grandparent visitation statute, MCL 722.27b, unconstitutional. The Court of Appeals indicated that “the lack of any standards in the Michigan statute beyond ‘the best interests of the child,’ and specifically the failure of the statute to afford any deference to the custodial parent’s decision, renders the Michigan statute unconstitutional as written.” 249 Mich App at 394-95. On October 8, 2002, the Michigan Supreme Court granted application for leave to appeal the above cited Court of Appeals opinion, solely on the issue of whether or not MCL 722.27b is constitutional.

Derosé v Derosé, 467 Mich 884 (2002). As of June 27, 2003, the Michigan Supreme Court has not issued an opinion on this case.

6.8 Adult Adoption

If the person to be adopted is an adult, the court may enter an order of adoption after all of the following have occurred:

- ♦ The adoptee consents to the adoption pursuant to MCL 710.43(3).
- ♦ The written report of investigation required by MCL 710.46(2) is filed with the court.
- ♦ Notice has been served upon interested parties described in MCL 710.24a. MCL 710.56(3).

See Appendix A for the “Adult Adoption Procedures” checklist from the Family Division of the Circuit Court in Kent County and the “Adult Adoption” checklist from the Kalamazoo County Circuit Court Family Division.

Consent. An adult adoptee must consent* to the adoption. MCL 710.43(3). Adult adoptions do not require consent from any party other than the adult adoptee. MCL 710.43(3). A parent does *not* need to consent to the adoption of an adult adoptee where the termination of the mother’s parental rights is not sought. See *In re Munson*, 210 Mich App 500, 534 (1995).

*See Section 2.6 for more information on consents.

See Appendix B for the SCAO form “Consent to Adoption by Adoptee.”

Investigation. Upon the filing of an adoption petition, the court must direct a full investigation by an employee or agent of the court, a child placing agency, or the FIA.* The court may use the preplacement assessment and may order an additional investigation. MCL 710.46(1).

*Investigations for adult adoptions are usually more limited than investigations for the adoption of a child.

MCL 710.46(1) requires the following to be considered in the investigation:

“(a) The best interests of the adoptee.*

“(b) The adoptee’s family background, including names and identifying data regarding the parent or parents, if obtainable.

“(c) The reasons for the adoptee’s placement away from his or her parent or parents.”

*See MCL 710.22(f) or Section 6.3 for the definition of “best interests” of an adoptee.

A written report of the investigation must be filed within three months after the court orders the investigation. MCL 710.46(2).

In some situations, a full investigation may be waived by the court. MCL 710.46(3) provides:

“If the adoptee has been placed for foster care with the petitioner for 12 months or longer and the foster family study was completed or updated not more than 12 months before the petition was filed, the court, upon motion by the petitioner, may waive the full investigation required by this section. The foster family study, with information added as necessary to update or supplement the original study, may be substituted for the written report required under subsection (2).”

Although MCL 710.46 requires the investigation report to be filed within three months of when it is ordered, there is no penalty or sanction provided for failing to meet the deadline. In *In re DaBaja*, 191 Mich App 281, 287 (1991), the Court of Appeals held that a procedural defect by itself is not sufficient cause to set aside the trial court’s decision to terminate respondent’s parental rights. In *DaBaja*, the father’s parental rights were terminated pursuant to MCL 710.51. MCL 710.51 provides that “[n]ot later than 14 days after receipt of the report of investigation . . . the judge shall examine the report and shall enter an order terminating the rights of the child’s parent or parents. . . .” The trial court in *DaBaja* terminated the father’s parental rights without receiving the investigation report. The Court of Appeals held that the lower court’s failure to receive and review the investigation report prior to terminating the father’s parental rights was a procedural defect and that by itself was insufficient cause to set aside the termination order. 191 Mich App at 287.

Interested Parties. MCL 710.24a(1) provides that the “interested parties” in a petition for adoption are all of the following:

“(a) The petitioner.

“(b) The adoptee, if over 14 years of age.

“(c) A minor parent, adult parent, or surviving parent of an adoptee, unless 1 or more of the following apply:

(i) The rights of the parent have been terminated by a court of competent jurisdiction.

(ii) A guardian of the adoptee, with specific authority to consent to adoption, has been appointed.

(iii) A guardian of the parent, with specific authority to consent to adoption, has been appointed.

(iv) The rights of the parent have been released.

(v) The parent has consented to the granting of the petition.

“(d) The [FIA] or a child placing agency to which the adoptee has been, or for purposes of subsection (3) is proposed to be, released or committed by an order of the court.

“(e) A parent, guardian, or guardian ad litem of an unemancipated minor parent of the adoptee.

“(f) The court with permanent custody of the adoptee.

“(g) A court with continuing jurisdiction over the adoptee.

“(h) A child placing agency of another state or country that has authority to consent to adoption.

“(i) The guardian or guardian ad litem of an interested party.”

Service of Notice. MCR 3.802(A) governs the service of papers in adoption proceedings. Notice of an adult adoption proceeding may be served by mail under MCR 2.107(C)(3). MCR 3.802(A)(3).

MCR 2.107(C)(3) provides:

“*Mailing.* Mailing a copy under this rule means enclosing it in a sealed envelope with first class postage fully prepaid, addressed to the person to be served, and depositing the envelope and its contents in the United States mail. Service by mail is complete at the time of mailing.”

Supervision Period. MCL 710.56(3) provides that once the adoptee has consented, the written report of investigation has been filed with the court and notice has been served upon the interested parties, the court may enter an adoption order. No supervision period is required in adult adoptions.